

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MULTNOMAH

HENDRICKS LAW FIRM, P.C., an Oregon
corporation, and HEATHER A. BRANN,
PC, an Oregon corporation,

Plaintiffs,

v.

PEGGY S. FORAKER, as an individual,
and as trustee of the Foraker Family Trust,
and MCKENZIE LEIGH FORAKER, as
trustee of the Gren Trust,

Defendants.

Case No.

**COMPLAINT (Uniform Fraudulent
Transfer Act)**

**CASE NOT SUBJECT TO MANDATORY
ARBITRATION**

Equitable Relief Requested

Fee Authorized by: ORS 21.135(1), (2)(a)

Plaintiffs allege as follows:

1.

Plaintiff Hendricks Law Firm, P.C. was and is a professional corporation licensed to do
business in Oregon.

2.

Plaintiff Heather A, Brann, PC, was and is a professional corporation licensed to do
business in Oregon.

3.

Defendant Peggy S. Foraker (Foraker) was and is an individual who resides in Virginia,
and that has an ownership interest in the real property that is the subject of this action (Property),
which has a street address of 12407 NE Morris St., Portland, Oregon, 97230, and is legally

1 described as follows:

2 Lot 8, DALZIEL TERRACE, LOTS 7 TO 17 INCLUSIVE, in the City of Portland,
3 County of Multnomah and State of Oregon.

4 4.

5 Defendant McKenzie L. Foraker is an individual who resides in Virginia, and as trustee
6 of the Gren Trust, and a beneficiary of the Gren Trust, she claims to have an ownership interest
7 in the Property.

8 **FACTUAL HISTORY**

9 5.

10 In about 2012, Foraker was in a severe vehicular accident. The Defendants represented
11 Foraker against her auto insurer in protracted litigation that took over 8 years (the “USAA
12 litigation”).

13 6.

14 In 2016, Foraker caused to be created a revocable living trust called the Foraker Family
15 Trust.

16 7.

17 On or about March 1, 2019, Foraker purchased the Property out right with proceeds she
18 received from the USAA litigation. She purchased the Property as trustee for the Foraker Family
19 Trust. A copy of the deed is attached and incorporated here as **Exhibit 1**.

20 8.

21 On or about March 1, 2021, Foraker filed a lawsuit against Plaintiffs in Multnomah
22 County Circuit Court Case No. 21CV07345 alleging, among other things, professional
23 negligence.

1 9.

2 On or about March 7, 2023, after a series of motion practice and Court orders between
3 November 2021 and February 2023, the Defendants prevailed and obtained a general judgment
4 against Foraker.

5 10.

6 On or about May 4, 2023, the Court ordered that Foraker is responsible for the
7 Defendants' attorney fees incurred in defending themselves against her claims, through April 14,
8 2023, in the amount of \$739,070.88, and their costs in the amount of \$11,606.14, and a
9 prevailing party fee of \$345, and an enhanced prevailing party fee of \$5,000. A copy of the
10 Court's order is attached and incorporated here as **Exhibit 2**.

11 11.

12 After May 4, 2023, Foraker and the Defendants were discussing and negotiating the form
13 of judgment that would be entered in accordance with the Court's May 4 order.
14

15 12.

16 On about May 10, 2023, Foraker signed a document that states it creates a Virginia
17 irrevocable trust called the Gren Trust.
18

19 13.

20 Defendant McKenzie Foraker is named as the trustee of the Gren Trust, and the assets of
21 the Gren Trust are to be used for the care and wellbeing of Foraker, with Defendant McKenzie
22 Foraker being one of the two beneficiaries of the trust assets upon Foraker's death.
23

24 14.

25 Also on May 10, 2023, Foraker signed a bargain and sale deed that states she, as trustee
26 of the Foraker Family Trust, conveyed the Property to the Gren Trust (Deed). A copy of the

1 Deed is attached and incorporated here as **Exhibit 3**. The Property remains occupied by
2 Foraker's sister, as it was prior to the conveyance.

3 15.

4 The Deed states that the Foraker Family Trust received \$490,000 in exchange for the
5 conveyance, but in fact no money has been provided in exchange for the Property.
6

7 16.

8 To date, the Gren Trust has not provided any consideration for the Property.

9 17.

10 Also on May 10, 2023, Foraker signed a document that states she, as trustee of the
11 Foraker Family Trust, conveyed property she owns in Virginia to the Gren Trust, without any
12 consideration being provided in exchange.
13

14 18.

15 Foraker, and her daughter Defendant McKenzie Foraker, still reside at the Virginia
16 property, as they did prior to the conveyance.

17 19.

18 On May 12, 2023, Foraker caused the Deed to be recorded in Multnomah County,
19 Oregon.
20

21 20.

22 On May 16, 2023, this Court signed a supplemental judgment based on the Court's May
23 4 order, and this supplemental judgment was entered by this court on May 17, 2023. A copy of
24 the supplemental judgment is attached and incorporated here as **Exhibit 4**.

25 ///

26 ///

PLAINTIFFS' CLAIM FOR RELIEF
(Oregon's Uniform Fraudulent Transfer Act)

Plaintiffs re-allege paragraphs 1-20 as though fully set forth here.

21.

Despite the language in the Deed, Foraker admits that she has not received any consideration for the Property.

22.

Foraker's conveyance of the Property to the Gren Trust was to an insider, not an arms-length transaction.

23.

Foraker's creation of the Gren Trust, and the transfer of the Property and the Virginia property (collectively, Properties) was made after Plaintiffs' claims against Foraker arose, and at a time when she knew or reasonably should have known that she owed Plaintiffs' money.

24.

Foraker's transfer of the Properties was made at a time when she knew that after the transfer of the Properties, she would incur a debt owing to the Plaintiffs that would be beyond her ability to pay.

25.

Foraker has said that she does not intend to give the Plaintiffs any money to satisfy the supplemental judgment that was entered in their favor on May 17, 2023.

26.

Foraker became insolvent as a result of the transfer of the Properties.

27.

Foraker's transfer of the Properties was fraudulent pursuant to ORS 95.230(1)(a) because of the facts alleged in paragraphs 1-26 above.

///

28.

Foraker's transfer of the Properties was fraudulent pursuant to ORS 95.230(1)(b) because of the facts alleged in paragraphs 21, and 24-26 above.

29.

Foraker's transfer of the Properties was fraudulent pursuant to ORS 95.240(1), (2) because of the facts alleged in paragraphs 21, and 24-26 above.

30.

Plaintiffs have a right to recover their attorney fees incurred in bringing this action, pursuant to the written fee agreement in place between Plaintiffs and Foraker.

31.

Pursuant to the ORS 95.260, Plaintiffs are entitled to the following relief:

- a. An order avoiding the transfer of the Property, as fully described in Exhibit 1, to the extent necessary to satisfy Plaintiff's claims;
- b. Attachment of a judgment lien onto the Property, in accordance with applicable Oregon statutes and the Oregon Rules of Civil Procedure;
- c. An order that authorizes the sheriff to conduct an execution sale of the Property to satisfy the supplemental judgment owing to the Plaintiffs; and/or
- d. Any other relief the circumstances may require.

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WHEREFORE, Plaintiffs pray for judgment in their favor and against Defendants as follows:

1. An Order providing Plaintiff with equitable relief as requested in paragraph 19 above;
2. For an award of Plaintiff's attorney fees and costs; and
3. For such other relief as this Court finds just.

DATED this 9th day of June, 2023.

/s/ Tim L. Eblen
Tim L. Eblen, OSB No. 050252
tim@eblenfreed.com
Of Attorneys for Plaintiffs

RECORDING REQUESTED BY:



1433 SW 6th Avenue
Portland, OR 97201

Multnomah County Official Records
E Murray, Deputy Clerk

2019-021270

03/01/2019 02:50:48 PM

1R-W DEED Pgs=3 Stn=36 HENTGESB
\$15.00 \$11.00 \$6.00 \$60.00

\$92.00

AFTER RECORDING RETURN TO:

Order No.: 161900183-LW
Peggy Foraker
The Foraker Family Trust
12407 NE Morris Street
Portland, OR 97230

SEND TAX STATEMENTS TO:

The Foraker Family Trust
12407 NE Morris Street
Portland, OR 97230

APN: R144381

SPACE ABOVE THIS LINE FOR RECORDER'S USE

STATUTORY WARRANTY DEED

Diane Christine Larson, Successor Trustee of the Berdean Faye Olson Family Trust, dated March 28, 1996, Grantor, conveys and warrants to **Peggy Sue Foraker, Trustee of The Foraker Family Trust dated October 20, 2016,** Grantee, the following described real property, free and clear of encumbrances except as specifically set forth below, situated in the County of Multnomah, State of Oregon:

Lot 8, DALZIEL TERRACE, LOTS 7 TO 17 INCLUSIVE, in the City of Portland, County of Multnomah and State of Oregon.

THE TRUE AND ACTUAL CONSIDERATION FOR THIS CONVEYANCE IS THREE HUNDRED SIXTY THOUSAND AND NO/100 DOLLARS (\$360,000.00). (See ORS 93.030).

Subject to:

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF

BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010. THIS INSTRUMENT DOES NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92.010 OR 215.010, TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL, TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES, AS DEFINED IN ORS 30.930, AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010.

Lawyers 161900183

STATUTORY WARRANTY DEED
(continued)

IN WITNESS WHEREOF, the undersigned have executed this document on the date(s) set forth below.

Dated: March 1, 2019

Berdean Faye Olson Family Trust, dated March 28, 1996

BY: Diane Christine Larson
Diane Christine Larson
Successor Trustee

State of Oregon
County of Tackamas

This instrument was acknowledged before me on 3/1/2019 by Diane Christine Larson as
Successor Trustee of the Berdean Faye Olson Family Trust, dated March 28, 1996.

[Signature]
Notary Public - State of Oregon

My Commission Expires: 2/17/20

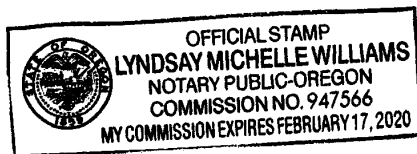


EXHIBIT "A"
Exceptions

Subject to:

City Liens, if any, in favor of the City of Portland. None found as of February 28, 2019.

Restrictions, but omitting restrictions, if any, based upon race, color, religion, sex, sexual orientation, familial status, marital status, disability, handicap, national origin, ancestry, or source of income, as set forth in applicable state or federal laws, except to the extent that said restriction is permitted by applicable law, as shown on that certain plat

Name of Plat: Dalziel Terrace

Verified Correct Copy of Original 5/4/2023.

FILED
IN THE CIRCUIT COURT OF THE STATE OF OREGON

2023 MAY -4 PM 3:38
COUNTY OF MULTNOMAH
4TH JUDICIAL DIST.

PEGGY S. FORAKER,

Plaintiff,

vs.

STEPHEN C. HENDRICKS, et al.,

Defendants.

CASE NO. 21CV07345

**OPINION AND ORDER ON CROSS
PETITIONS FOR ATTORNEY FEES**

This matter came before the court on April 14, 2023, for hearing on the parties' Cross Petitions for Attorney Fees. Plaintiff appeared through her attorney Katherine Heekin. Defendants appeared through their attorney Molly Honore. The Honorable Shelley D. Russell presided.

Plaintiff and Defendants each argue that they are entitled to recovery of attorney fees and costs based on the language of the Attorney Fee Agreement at issue in this case which states in relevant part that with regard to "any dispute regarding payment" of attorney fees, "the prevailing party shall be entitled to a reasonable fee from the party opposing the prevailing party." In this heavily litigated dispute, both sides argue that they are the prevailing party. For the reasons stated below, I find that Defendants are the sole prevailing party and should be awarded their fees.

I. DETERMINATION OF PREVAILING PARTY

Plaintiff argues that she is the prevailing party as to those counterclaims that Defendants did not replead, and as to Defendants' 2nd Counterclaim which was voluntarily dismissed by Defendants as moot. Defendants argue that Plaintiff is not the prevailing party as

to any of Defendants' counterclaims because the Fee Agreement envisions only one prevailing party, because Defendants are the only parties that obtained all relief they sought in the case, because Plaintiff is not entitled to fees on Defendants' voluntarily dismissed 2nd Counterclaim, and because Plaintiff failed to plead an entitlement to fees on the other dismissed Counterclaims.

For purposes of determining who is the prevailing party, the relevant procedural history of the instant case is as follows:

→ November 2, 2021, the court ruled on Plaintiff's Rule 21 Motions to Dismiss/Make More Definite and Certain, granting Plaintiff's motion as to Defendants' 4th through 7th Counterclaims with leave to amend to make more definite and certain. Defendants elected not to replead their 5th, 6th and 7th Counterclaims.

→ January 6, 2022, the court denied Plaintiff's Rule 21 Motions to Dismiss Defendants' Counterclaims.

→ February 9, 2022, the court granted Defendants' Partial Motion for Summary Judgment as to the majority of their claims but denied summary judgment on Defendants' 2nd Counterclaim as questions of fact precluded summary judgment on that claim.

→ July 11, 2022, the court granted Defendants' Motion for Summary Judgment against all of Plaintiffs' claims and denied summary judgment as to Defendants' 2nd Counterclaim, again because there were questions of fact for a jury to decide as to that counterclaim.

→ November 1, 2022, the court denied Plaintiff's Motion for Summary Judgment in their entirety, including against Defendants' 2nd Counterclaim. The court granted Defendants'

Motion for Summary Judgment on Defendants' 1st and 3rd – 5th Counterclaims, essentially granting all relief sought by Defendants and rendering their 2nd Counterclaim moot. The court at this time did not dismiss Defendants' 2nd Counterclaim.

→ Over Plaintiff's objection, Defendants subsequently voluntarily dismissed their 2nd Counterclaim as they had already been granted all relief they requested. The 2nd Counterclaim was dismissed by order of Judge David Rees with language allowing Plaintiff to argue that she was prevailing party on this claim.

According to ORS 20.077(2), the "prevailing party" is "the party who receives a favorable judgment * * * on the claim[.]" In actions involving multiple claims and counterclaims, there can be more than one "prevailing party." *Lemargie v. Johnson*, 212 Or.App. 451, 454 n. 3 (2007). To determine who is the prevailing party the court must weigh on a claim-by-claim basis, what was sought by each party against the result obtained. *Beggs v. Hart*, 221 Or.App. 528, 536-37 (2008).

Where a party voluntarily dismisses a claim, there is no "prevailing party" for purposes of a fee award. *Chinese Consolidated Benevolent Assoc. v. Chin*, 316 Or.App. 514, 521 (2021). Voluntary dismissal of a claim renders the underlying merits of the claim, as well as the defenses attacking that claim, moot. ORCP 54. Once a claim is rendered moot, the court lacks jurisdiction to resolve its merits solely for the purpose of determining attorney fee entitlement.

Here, the plain language of the Fee Agreement between the parties envisions one prevailing party in any dispute between them. The "dispute" at issue in this case was how to calculate the fee to which Defendants are entitled under the Fee Agreement: 40% of the entire recovery in the underlying case or the attorney fee awarded by the federal court. This court's

ruling on the parties' competing summary judgment motions answered that question in Defendants' favor. Under the interpretation of the Fee Agreement language, Defendants are the prevailing parties.

As to the dismissal of Defendants' Counterclaims in the instant case, because Defendants elected not to replead their 5th through 7th Counterclaims, they were essentially rendered moot and were not resolved on their merits. The same is true for Defendants' voluntarily dismissed 2nd Counterclaim. Furthermore, examining the relative success of the parties at achieving their goals, the dismissal of these counterclaims did not achieve a better result for Plaintiff or a worse result for Defendants. The dismissed counterclaims sought the same relief Defendants succeeded in securing through summary judgment on their surviving counterclaims. Plaintiff, on the other hand, was wholly unsuccessful in achieving any of the relief she sought. Balancing the relief sought by each party against the result obtained, Defendants are far and away the prevailing parties in this action.

II. Entitlement to and Amount of Fees

Turning to the determination of the amount and reasonableness of the fees sought by Defendants, the court must consider the factors set out in ORS 20.075(1) (whether to award fees) and (2) (amount to award).

A. ORS 20.075(1) Factors

ORS 20.075(1)(a) – The conduct of the parties in the transactions or occurrences that gave rise to the litigation, including any conduct that was reckless, willful, malicious, in bad faith, or illegal.

Plaintiff Foraker spent her long legal career litigating personal injury cases and was intimately familiar with the nature and kinds of fee agreements attorneys use in that type of

litigation. Although Plaintiff Foraker claimed that a brain injury impeded her understanding of the Fee Agreement at issue in this case, she continued to practice law for a number of years after suffering said injury, and engaged in educated, knowledgeable discussions and debates with Defendants and with her counsel in this lawsuit throughout the course of this litigation. Plaintiff's actions in assuring Defendants they would be paid, then suing them once their drafting work on Plaintiff's appeal was complete strike this court as disingenuous at best, and conniving at worst. This court ultimately found her claims of wrongdoing by Defendants unsupported by evidence and dismissed them all. This factor supports an award of attorney fees and costs to Defendants.

ORS 20.075(1)(b) – The objective reasonableness of the claims and defenses asserted by the parties.

In light of the overwhelming success of Defendants' efforts on Plaintiff's behalf in the underlying federal litigation, the plain language of the Fee Agreement, as well as Plaintiff's own knowledge and experience in the field, the claims Plaintiff brought in this lawsuit are objectively unreasonable. This factor supports an award of attorney fees and costs to Defendants.

ORS 20.075(1)(c) – The extent to which an award of attorney fees in the case would deter others from asserting good faith claims or defenses in similar cases.

An award of attorney fees and costs in this case would encourage others to assert good faith claims and defenses in similar cases. This factor favors Defendants.

ORS 20.075(1)(d) – The extent to which an award of attorney fees in the case would deter others from asserting meritless claims and defenses.

Exposure to attorney fees and costs would deter others from asserting similarly meritless claims and defenses. This factor favors Defendants.

ORS 20.075(1)(e) – The objective reasonableness of the parties and the diligence of the parties and attorneys during the proceedings.

This has been a hard-fought case by all parties involved. From the court's perspective, emotions have more than once clouded reason between and among the parties on both sides of the aisle but appear to have affected Plaintiff Foraker's ability to see this case clearly and to make rational decisions to a greater extent than it has Defendants. This factor weighs in favor of Defendants.

ORS 20.075(1)(f) – The objective reasonableness of the parties and the diligence of the parties in pursuing settlement of the dispute.

Despite this court's rulings on summary judgment, and according to the declarations of counsel submitted by Defendants, it appears that settlement discussions between the parties were entirely unproductive. Defendants state that they made four settlement offers to Plaintiff over the course of this case and participated in one global settlement conference, but Plaintiff made no effort to engage in fruitful discussion. Plaintiff argues Defendants' settlement offers were unreasonable and would have required her to pay Defendants money she believed belonged to her from the federal litigation. On balance, the court finds that this factor weighs in favor of Defendants.

ORS 20.075(1)(g) – The amount the court has awarded as a prevailing party fee under ORS 20.190.

Based on my findings under ORS 20.075, the court awards Defendants an enhanced prevailing party fee in the amount of \$5,000 pursuant to ORS 20.190(3).

ORS 20.075(1)(h) – Such other factors as the court may consider appropriate under the circumstances of the case.

This case has involved scorched earth litigation on both sides. Throughout this case it appears that every issue, no matter how small, has been analyzed, briefed, and argued at great length and detail due to the personal and professional reputations at stake for all involved. This court is not blind to the toll this matter has taken on the parties and counsel. To some extent emotion rather than logic has been driving this litigation, resulting in hundreds of hours of time and great expense. Plaintiff made certain choices in this litigation that increased her exposure to defense fees and costs and must now bear the brunt of those fees and costs.

The court finds that an award of attorney fees and costs to Defendants is appropriate pursuant to the factors in ORS 20.075(1).

B. ORS 20.075(2) Factors

Once the court has determined that an award of fees to the prevailing party is appropriate based on the ORS 20.075(1) factors, the court must determine a reasonable amount of fees. To determine the amount of fees to award, the court considers not only the ORS 20.057(1) factors, but must examine the factors set out in ORS 20.075(2) as well.

ORS 20.075(2)(a) – The time and labor required in the proceeding, the novelty and difficulty of the questions involved in the proceeding, and the skill needed to properly perform the services.

Both parties submitted itemized statements of time charged in this matter which the court has reviewed. In addition, the court examined the time records of PLF counsel with the Cable Houston firm for comparison with the records submitted by Defendants. Cable Houston time was incurred by the Professional Liability Fund on behalf of Defendants in their defense against Plaintiff's claims and is not sought in Defendants' fee petition. It is the court's understanding that there is no dispute as to the hourly rates charged by Defense counsel in this

case, only as to the number hours billed. All of the attorneys involved in this case are highly skilled, well-respected members of the bar.

The novelty and difficulty of the questions involved in this case are clear. There is little to no Oregon case law addressing disputes over contingent fee agreements and attorney fees resulting therefrom. The theories posited by Plaintiff were for the most part novel and inventive albeit unsuccessful. This was a hard-fought case on both sides.

ORS 20.075(2)(b) – The likelihood, if known to the client, that the acceptance of this case would preclude the attorney from taking other cases.

This factor is not relevant to these proceedings.

ORS 20.075(2)(c) – The fee customarily charged in the locality for similar legal services.

The court finds that the hourly rates charged by the attorneys in this case are reasonable. The court further acknowledges that defense counsel reduced their rates slightly for Defendants.

ORS 20.075(2)(d) – The amount involved in the controversy and the results obtained.

The amount sought by the Plaintiff in this case exceeded \$4.8 million, of which she recovered nothing. The fees sought by Defendants are roughly 20% of Plaintiff's prayer. Defendants defeated Plaintiff's claims and succeeded on four of their seven counterclaims, granting them the entirety of the relief they sought.

ORS 20.075(2)(e) – The time limitations imposed by the client or the circumstances of the case.

This factor is not relevant to these proceedings.

ORS 20.075(2)(f) – The nature and length of the attorney's professional relationship with the client.

This factor is not relevant to these proceedings.

8 – ORDER ON CROSS PETITIONS FOR ATTORNEY FEES

ORS 20.057(2)(g) – The experience, reputation, and ability of the attorney performing the services.

As stated above, the attorneys involved in this case are all experienced, well known, highly competent and skilled counsel. This factor is reflected in the lack of dispute over the hourly rates sought by Defense counsel.

ORS 20.075(2)(h) & (i) are not relevant to these proceedings and do not factor into this opinion.

C. Attorney Fees Billed by Defendants Hendricks and Brann Individually

Both Hendricks and Brann submit their own billing records for time they spent assisting with the litigation, conducting research and preparing briefs. The parties dispute whether such time is recoverable by a litigant/attorney. Both Hendricks and Brann submitted detailed declarations and billing records segregating time spent performing legal tasks from time spent participating as clients in the case. I find that pursuant to *Colby v. Gunson*, 349 Or. 1 (2010); and *Moro v. State*, 360 Or. 467 (2016), Hendricks and Brann are entitled to recover fees for their time spent performing legal work in the case.

III. Reasonable Attorney Fees

No objection was made to the hourly rates sought by Defendants in this litigation. Defendants submitted supporting evidence in the form of declarations and surveys regarding the rates they charge. The court finds the hourly rates are reasonable.

Plaintiff argues for a reduction in Defendants' time on the basis that Defendants utilized many associates and partners in the Markowitz firm along with Defendants Hendricks and Brann while Plaintiff only employed the services of two attorneys. Plaintiff claims Defendants submitted duplicate time entries for multiple attorneys and charged excessive fees for work

that required limited discovery, depositions, and legal research. Plaintiff also objects to time spent pursuing remedies in the federal court case.

Defendants argue that the nature and novelty of this case warranted the amount of time, the number of attorneys, and the hourly rates sought because Plaintiff engaged in unreasonable litigation practices that necessitated the motions practice, research, strategizing and discovery Defendants undertook. Defendants argue that Plaintiff had numerous opportunities to resolve this litigation without both sides incurring high fees but chose not to.

Both sides accuse the other of nefarious motives, less than ethical conduct, and over-litigating this case.

The court finds that both sides have a point. The fees sought by Defendants based on the time spent are extraordinarily high, however, those fees were driven in part by Plaintiff's litigation strategies and Defendants' need to respond. Following a review of the time records of the parties and Plaintiffs' objections to specific time records as set out in Plaintiff's counsel's Declaration Exhibits, the court finds that the fees sought by Defendants should be reduced by 25% across the board and awards Defendants fees in the amount of \$739,070.88 for time incurred through April 14, 2023.

VI. Costs

The authority to award costs is controlled entirely by statute. *Blacknall v. Board of Parole*, 223 Or.App. 294, 196 P.3d 20 (2008), *aff'd*, 348 Or. 131, 229 P.3d 595 (2010). ORCP 68A(2) provides that costs incurred (other than for legal services) in pursuing an action are recoverable.

ORCP 68A(2) prohibits the recovery of deposition costs unless otherwise provided by rule or statute. Defendants are not entitled to recovery of their deposition costs.

Defendants argue that they are entitled to recover costs for computer-aided research as charges billed to their clients. ORCP 68A(2) does not spell out computer-aided legal research as a recoverable costs and the court can find no explicit authority for awarding them. Defendants are not entitled to recovery of costs for computer-aided legal research.

The court finds that Defendants are entitled to recovery of costs incurred in pursuing their successful counterclaims in the amount of \$11,606.14.

V. Conclusion

The court finds Defendants are the sole prevailing party in this matter, awards Defendants attorney fees through April 14, 2023, in the amount of \$739,070.88, and awards costs in the amount of \$11,606.14.

DATED this 4th day of May 2023.

Shelley D. Russell

SHELLEY D. RUSSELL
Circuit Court Judge

THIS SPACE PROVIDED FOR RECORDER'S USE ONLY

Multnomah County Official Records
E Murray, Deputy Clerk

2023-028769

05/12/2023 08:50:14 AM

DEED-DEED Pgs=2 Stn=77 ATLR
\$10.00 \$11.00 \$10.00 \$60.00

\$91.00

WHEN RECORDED RETURN TO:

Gren Trust
42 Broad Street Road NO. 131
Manakin Sabot , VA 23103

SEND TAX STATEMENTS TO THE ABOVE TRUST AND ADDRESS
BARGAIN AND SALE DEED

THE GRANTOR: Foraker Family Trust

THE GRANTEE: The Gren Trust

For in consideration of \$490,000, and other valuable consideration, the Grantor grants and releases to the Grantee all of the Grantor's rights, title and in the following described property:

12407 NE Morris St. Portland, OR 97230 MULTNOMAH COUNTY

DALZIEL TERR LOT 8

Grantor grants all of Grantor's rights, tile and interest in and to the following described property and premises to the Grantee(s) heirs and assigns forever, so that neither Grantor nor Grantor's legal representatives or assigns shall have, claim or demand any right or title to the property.

Dated May 10th, 2023. *[Signature]*
Grantor

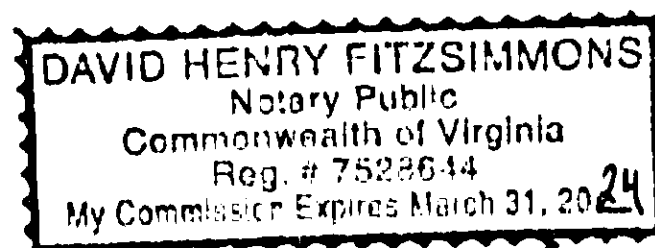
STATE OF VIRGINIA
CITY/COUNTY OF Goochland to with:

The foregoing instrument was acknowledged before me this 10 day of May 2023 by PEGGY SUE FORAKER, TRUSTEE OF THE FORAKER FAMILY TRUST DATED OCTOBER 20, 2016.

David Henry Fitzsimmons
NOTARY PUBLIC

My Commission expires: March 31, 2024

Grantee's mailing address:
42 Broad St. Rd.,
Manakin Sabot, VA 23103



David Henry Fitzsimmons
Notary Public
Commonwealth of Virginia
Reg # 7528644
My Commission expires March 31, 2024

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MULTNOMAH

PEGGY S. FORAKER,

Plaintiff,

vs.

STEPHEN C. HENDRICKS, an Oregon
resident, HENDRICKS LAW FIRM, P.C., an
Oregon corporation, HEATHER A. BRANN,
an Oregon resident, and HEATHER A.
BRANN, PC, an Oregon corporation,

Defendants.

No. 21CV07345

Hon. Shelley D. Russell

**SUPPLEMENTAL JUDGMENT
AWARDING DEFENDANTS'
ATTORNEY FEES THROUGH
APRIL 14, 2023 AND MONEY
AWARD**

SUPPLEMENTAL JUDGMENT

For the reasons set out in the Court's May 4, 2023 Order on Cross Petitions for
Attorney Fees

IT IS HEREBY ORDERED AND ADJUDGED that:

1. Judgment is entered in Defendants' favor for attorney fees in the sum of
\$739,070.88.
2. Judgment is entered in Defendants' favor for costs and disbursements in the
sum of \$11,606.14.
3. The Court awards Defendants a prevailing party fee of \$345.00 and an
enhanced prevailing party fee of \$5,000.00.

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MONEY AWARD

Judgment Creditors:

Hendricks Law, PC
30088 SW Egger Rd.
Hillsboro, Oregon 97123

Heather A. Brann PC
1351 NE East Devils Lake Rd.
Otis, Oregon 97368

Judgment Creditors' Attorneys:

David B. Markowitz
Molly Honoré
Markowitz Herbold PC
1455 SW Broadway, Suite 1900
Portland, OR 97201

Heather A. Brann
Heather A. Brann PC
PO Box 11588
Portland, OR 97211

Jon W. Monson
Brian S. Epley
Cable Huston LLP
1455 SW Broadway, Suite 1500
Portland, OR 97201

Payment entitlement:

There is no known person or public body known to the judgment creditors who is entitled to any portion of the payment made upon the judgment.

Judgment Debtor:

Peggy Foraker

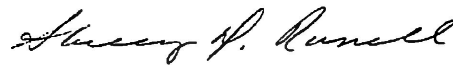
Judgment Debtor's Attorney:

Katherine R. Heekin
The Heekin Law Firm
7327 SW Barnes Road, Suite 824
Portland, OR 97225

Cody Hoesly
Barg Singer Hoesly PC

1		121 SW Morrison Street
2		Suite 600
3		Portland, Oregon 97204
4	Last Known Address:	2436 Bridgewater Dr.
5		Maidens, VA 23102
6	Date of Birth:	12/12/1949
7	Social Security Number:	***-**-1781
8	Attorney Fees:	\$739,070.88
9	Litigation Costs:	\$ 11,606.14
10	Prevailing Party fee:	\$ 345.00
11	(ORS 22.190(2)(a)(A))	
12	Enhanced Prevailing Party fee:	\$ 5,000.00
13	(ORS 20.190(3))	
14	TOTAL MONEY AWARD	\$756,022.02
15	Post-Judgment Interest:	9% per annum simple interest from entry of
16		judgment in the Circuit Court.

5/16/2023 3:25:16 PM



Circuit Court Judge Shelley D. Russell

Presented by:

Heather A. Brann, OSB # 040495
 Heather A. Brann PC
 branns@earthlink.net
Of Attorneys for Defendants

UTCR 5.100(2) CERTIFICATE OF READINESS

I hereby certify that the foregoing proposed judgment or order is ready for judicial signature based on the following:

1. ☐ Each party affected by the order or judgment has stipulated to the order or judgment, as shown by each party's signature on the document being submitted.
2. ☒ Each party affected by this order or judgment has approved the order or judgment, as shown by each party's signature on the document being submitted or by written confirmation of approval sent to me.
3. ☐ I have served a copy of this order or judgment on each party entitled to service pursuant to UTCR 5.100 (on _____) and:
 - a. ☐ No objection has been served on me.
 - b. ☐ I received objections that I could not resolve with a party despite reasonable efforts to do so. I have filed a copy of the objections I received and indicated which objections remain unresolved.
 - c. ☐ After conferring about objections [role and name of objecting party] agreed to independently file any remaining objections.
4. ☐ Service is not required pursuant to subsection (3) of this rule, or by statute, rule or otherwise.
5. ☐ This is a proposed judgment that includes an award of punitive damages and notice has been served on the Director of the Crime Victims' Assistance Section as required by subsection (5) of this rule.
6. ☐ Other: _____

DATED this 9th day of May, 2023.

HEATHER A. BRANN PC

By: /s/ Heather A. Brann

Heather A. Brann, OSB #040495
Brann Defendants

ATTORNEY CERTIFICATE OF SERVICE

I hereby certify that on May 5, 2023, I have made service of the foregoing **JUDGMENT** on the parties listed below in the manner indicated:

Katherine R. Heekin
The Heekin Law Firm
7327 SW Barnes Road, Suite 824
Portland, OR 97225

Attorney for Plaintiff

- ☐ U.S. Mail
☐ Facsimile
☒ Hand Delivery
☐ Overnight Courier
☒ Email - katherine@heekinlawoffice.com
☐ Odyssey File & Serve™

Cody Hoesly
Barg Singer Hoesly, PC
121 SW Morrison Street, Suite 600
Portland, Oregon 97204

Attorney for Plaintiff

- ☐ U.S. Mail
☐ Facsimile
☒ Hand Delivery
☐ Overnight Courier
☒ Email - choesly@bargsinger.com
☐ Odyssey File & Serve™

Jon W. Monson
Brian S. Epley
Cable Huston LLP
1455 SW Broadway, Suite 1500
Portland, OR 97201

Attorney for Defendants Hendricks

- ☐ U.S. Mail
☐ Facsimile
☐ Hand Delivery
☐ Overnight Courier
☒ Email - jmonson@cablehuston.com
bepley@cablehuston.com
☐ Odyssey File & Serve™

David B. Markowitz
Molly Honoré
Hannah Hoffman
Markowitz Herbold PC
1455 SW Broadway, Suite 1900
Portland, OR 97201

Attorney for Defendants

- ☐ U.S. Mail
☐ Facsimile
☐ Hand Delivery
☐ Overnight Courier
☒ Email -
davidmarkowitz@markowitzherbold.com
mollyhonore@markowitzherbold.com
hannahhoffman@markowitzherbold.com
☐ Odyssey File & Serve™

DATED this 9th day of May, 2023.

HEATHER A. BRANN, PC

/s/ Heather A. Brann

Heather A. Brann, OSB #040495
Brann Defendants

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MULTNOMAH

HENDRICKS LAW FIRM, P.C., an Oregon
corporation, and HEATHER A. BRANN,
PC, an Oregon corporation,

Plaintiffs,

v.

PEGGY S. FORAKER, as an individual,
and as trustee of the Foraker Family Trust,
and MCKENZIE LEIGH FORAKER, as
trustee of the Gren Trust,

Defendants.

Case No. 23CV23474

**FIRST AMENDED COMPLAINT
(Uniform Fraudulent Transfer Act, and
Creditors' Bill to Determine Priorities of
Interests in Certain Real and Personal
Property)**

**CASE NOT SUBJECT TO MANDATORY
ARBITRATION**

Equitable Relief Requested

Fee Authorized by: ORS 21.135(1), (2)(a)

Plaintiffs allege as follows:

1.

Plaintiff Hendricks Law Firm, P.C. was and is a professional corporation licensed to do
business in Oregon.

2.

Plaintiff Heather A, Brann, PC, was and is a professional corporation licensed to do
business in Oregon.

3.

Defendant Peggy S. Foraker ("Foraker") was and is an individual who resides in
Virginia, and that has an ownership interest in the real property that is the subject of this action
(Property), which has a street address of 12407 NE Morris St., Portland, Oregon, 97230, and is

1 legally described as follows:

2 Lot 8, DALZIEL TERRACE, LOTS 7 TO 17 INCLUSIVE, in the City of Portland,
3 County of Multnomah and State of Oregon.

4 4.

5 Defendant McKenzie L. Foraker is an individual who resides in Virginia, and as trustee
6 of the Gren Trust, and a beneficiary of the Gren Trust, she claims to have an ownership interest
7 in the Property.

8 **FACTUAL HISTORY**

9 5.

10 In about 2012, Foraker was in a severe vehicular accident. Plaintiffs represented Foraker
11 against her auto insurer in protracted litigation that took over 8 years (the “USAA litigation”).

12 6.

13 In 2016, Foraker caused to be created a revocable living trust called the Foraker Family
14 Trust.

15 7.

16 On or about March 1, 2019, Foraker purchased the Property out right with proceeds she
17 received from the USAA litigation. She purchased the Property as trustee for the Foraker Family
18 Trust. A copy of the deed is attached and incorporated here as **Exhibit 1**.

19 8.

20 On or about March 1, 2021, Foraker filed a lawsuit against Plaintiffs in Multnomah
21 County Circuit Court Case No. 21CV07345 asserting claims for breach of fiduciary duty,
22 professional negligence, Elder Financial Abuse, and Declaratory Judgment (the “Lawsuit”).

23 9.

24 On or about July 11, 2022, the Court found that Foraker’s claims in the Lawsuit, against
25 Plaintiffs, were at base a contractual dispute over the payment of attorney fees to Plaintiffs
26 pursuant to a valid and enforceable contingent fee agreement, that Plaintiffs did not charge a fee

1 in excess of what they were contractually entitled to, that there was abundant evidence that
2 Foraker had capacity at all relevant times and acted knowingly in her interactions with Plaintiffs,
3 and the Court granted summary judgment against all of Foraker's claims because of its finding
4 that there was no genuine issue of material fact from which a reasonable juror could find in
5 Foraker's favor.

6 10.

7 On or about March 7, 2023, the Court entered a general judgment against Foraker,
8 dismissing all of her claims asserted in the Lawsuit with prejudice.

9 11.

10 On or about May 4, 2023, the Court ordered that Foraker is responsible for the Plaintiffs'
11 attorney fees incurred in defending themselves against her claims in the Lawsuit, through April
12 14, 2023, in the amount of \$739,070.88, and their costs in the amount of \$11,606.14, and a
13 prevailing party fee of \$345, and an enhanced prevailing party fee of \$5,000. A copy of the
14 Court's order is attached and incorporated here as **Exhibit 2**.

15 12.

16 After May 4, 2023, Foraker and the Plaintiffs were discussing and negotiating the form of
17 judgment that would be entered in accordance with the Court's May 4 order.

18 13.

19 On about May 10, 2023, Foraker signed a document that states it creates a Virginia
20 irrevocable trust called the Gren Trust.

21 14.

22 Defendant McKenzie Foraker is named as the trustee of the Gren Trust, and the assets of
23 the Gren Trust are to be used for the care and wellbeing of Foraker, with Defendant McKenzie
24 Foraker being one of the two beneficiaries of the trust assets upon Foraker's death.

25 15.

26 Also on May 10, 2023, Foraker signed a bargain and sale deed that states she, as trustee

1 of the Foraker Family Trust, conveyed the Property to the Gren Trust (Deed). A copy of the
2 Deed is attached and incorporated here as **Exhibit 3**. The Property remains occupied by
3 Foraker's sister, as it was prior to the conveyance.

4 16.

5 The Deed states that the Foraker Family Trust received \$490,000 in exchange for the
6 conveyance, but in fact no money has been provided in exchange for the Property.

7 17.

8 To date, the Gren Trust has not provided any consideration for the Property.

9 18.

10 Also on May 10, 2023, Foraker signed a document that states she, as trustee of the
11 Foraker Family Trust, conveyed property she owns in Virginia to the Gren Trust, without any
12 consideration being provided in exchange.

13 19.

14 Foraker, and her daughter Defendant McKenzie Foraker, still reside at the Virginia
15 property, as they did prior to the conveyance.

16 20.

17 On May 12, 2023, Foraker caused the Deed to be recorded in Multnomah County,
18 Oregon.

19 21.

20 On May 16, 2023, this Court signed a supplemental judgment based on the Court's May
21 4 order, and this supplemental judgment was entered by this court on May 17, 2023. A copy of
22 the supplemental judgment is attached and incorporated here as **Exhibit 4**.

23 22.

24 On May 25, 2023, Plaintiffs sent a letter, via regular and certified mail, to Foraker
25 demanding payment without ten (10) days of the supplemental judgment. Foraker personally
26 signed for the certified mailing of this letter on about May 31, 2023.

23.

On June 9, 2023, Plaintiffs conducted a debtor examination of Foraker. In the course of that examination, Foraker testified that she had conveyed essentially all of her assets to the newly created Gren Trust.

24.

Foraker testified that the only asset that she still owns that has substantial monetary value is her IRA, which is a retirement account that is protected under state and federal law from execution, and thus unavailable to be levied for payment of Plaintiffs' supplemental judgment.

25.

When asked how Foraker intends to pay the supplemental judgment, she testified that she does not have assets with which to pay, and that she does not intend to voluntarily pay any money to Plaintiffs.

PLAINTIFFS' FIRST CLAIM FOR RELIEF

(Oregon's Uniform Fraudulent Transfer Act)

Plaintiffs re-allege paragraphs 1-25 as though fully set forth here.

26.

Despite the language in the Deed, Foraker admits that she has not received any consideration for the Property.

27.

Foraker's conveyance of the Property to the Gren Trust was to an insider, not an arms-length transaction.

28.

Foraker's creation of the Gren Trust, and the transfer of the Property and the Virginia property (collectively, Properties) was made after Plaintiffs' claims against Foraker arose, and at a time when she knew or reasonably should have known that she owed Plaintiffs' money.

///

29.

Foraker's transfer of the Properties was made at a time when she knew that after the transfer of the Properties, she would incur a debt owing to the Plaintiffs that would be beyond her ability to pay.

30.

Foraker has said that she does not intend to give the Plaintiffs any money to satisfy the supplemental judgment that was entered in their favor on May 17, 2023.

31.

Foraker became insolvent as a result of the transfer of the Properties.

32.

Foraker's transfer of the Properties was fraudulent pursuant to ORS 95.230(1)(a) because of the facts alleged in paragraphs 1-31 above.

33.

Foraker's transfer of the Properties was fraudulent pursuant to ORS 95.230(1)(b) because of the facts alleged in paragraphs 26, and 28-31 above.

34.

Foraker's transfer of the Properties was fraudulent pursuant to ORS 95.240(1), (2) because of the facts alleged in paragraphs 26-31 above.

35.

Plaintiffs have a right to recover their attorney fees incurred in bringing this action, pursuant to the written fee agreement in place between Plaintiffs and Foraker.

36.

Pursuant to the ORS 95.260, Plaintiffs are entitled to the following relief:

- a. An order avoiding the transfer of the Property, as fully described in Exhibit 1, to the extent necessary to satisfy Plaintiff's claims;

- b. Attachment of a judgment lien onto the Property, in accordance with applicable Oregon statutes and the Oregon Rules of Civil Procedure;
- c. An order that authorizes the sheriff to conduct an execution sale of the Property to satisfy the supplemental judgment owing to the Plaintiffs;
- d. An order enjoining Defendants from causing any waste of the Property; and/or
- e. Any other relief the circumstances may require.

PLAINTIFFS' SECOND CLAIM FOR RELIEF
(Creditors' Bill to Determine Priorities of Interests in the Property
and in certain personal property)

37.

Plaintiffs re-allege paragraphs 1-25 as though fully set forth here.

38.

From about 2012 to 2021, Plaintiffs expended a significant amount of time, effort, and resources in pursuing the USAA Litigation on behalf of Foraker.

39.

Foraker purchased the Property from proceeds that she received from the USAA Litigation.

40.

Foraker hired Katherine R. Heekin, and/or Katherine R. Heekin, P.C., doing business as The Heekin Law Firm, ("Heekin") to represent her regarding potential claims against Plaintiffs.

41.

In March 2021, Heekin commenced the Lawsuit on Foraker's behalf asserting multiple claims against the Plaintiffs, essentially asserting that Plaintiffs wrongfully took more money than they were owed for the services rendered to Foraker.

42.

Despite multiple attempts by Plaintiffs to reach an amicable resolution of the Lawsuit,

1 Foraker was unwilling to compromise her position that the Plaintiffs should not be paid the fee
2 that she had agreed to in the contingent fee agreement she had entered into with the Plaintiffs.

3 43.

4 Plaintiffs believe that further evidence will show that Heekin was advising Foraker that
5 she had a strong legal basis to prevail in the Lawsuit when, in fact, she did not.

6 44.

7 The claims that Heekin asserted in the Lawsuit, on Foraker's behalf, were without legal
8 merit.

9 45.

10 As a result of the Lawsuit, Foraker has lost her claims and owes a significant amount of
11 money to the Plaintiffs, as reflected in the supplemental judgment.

12 46.

13 Upon entry of the supplemental judgment, Plaintiffs learned that days earlier Foraker had
14 transferred the Property to the Gren Trust, which is controlled by her daughter, Defendant
15 McKenzie L. Foraker.

16 47.

17 Foraker's transfer of the Property prevented Plaintiffs' supplemental judgment from
18 becoming a judgment lien on the Property, as it otherwise would have pursuant to Oregon law.

19 48.

20 Defendant McKenzie L. Foraker, as trustee for the Gren Trust, claims an interest in the
21 Property as a result of the May 10 conveyance of the Property to the Gren Trust.

22 49.

23 Foraker's conveyance of the Property to Defendant McKenzie L. Foraker, as trustee for
24 the Gren Trust, was done without any consideration, putting a significant asset of Foraker's out
25 of reach of Plaintiffs just days before the Court awarded the supplemental judgment against
26 Foraker and in Plaintiffs' favor.

1 50.

2 Foraker claims that, after her transferring property to the Gren Trust, she no longer has
3 assets sufficient to pay the supplemental judgment.

4 51.

5 Plaintiffs have no adequate remedy at law as Foraker has placed her assets into the Gren
6 Trust.

7 52.

8 Plaintiffs are entitled to a judgment lien on the Property and for an order allowing for the
9 sale of the Property to satisfy the debt owed to Plaintiffs pursuant to the supplemental judgment,
10 and an order enjoining the Defendants from causing waste to the Property, all as set forth in
11 paragraph 36 above.

12 53.

13 Plaintiffs are entitled to an order seizing Foraker's right to pursue a legal malpractice
14 claim ("Claim") against Heekin, and ordering the sale of the Claim to satisfy the debt owed to
15 Plaintiffs pursuant to the supplemental judgment.

16 54.

17 Plaintiffs have a right to recover their attorney fees incurred in bringing this action,
18 pursuant to the written fee agreement in place between Plaintiffs and Foraker.

19 WHEREFORE, Plaintiffs prays for judgment in their favor and against Defendants as follows:

20 On Plaintiffs' First Claim for Relief:

- 21 1. An Order providing Plaintiff with equitable relief as requested in paragraph 36 above;
22 2. For an award of Plaintiffs' attorney fees and costs; and
23 3. For such other relief as this Court finds just.

24 On Plaintiffs' Second Claim for Relief:

- 25 1. An Order providing Plaintiff with equitable relief as requested in paragraph 52 above;
26 2. For an Order seizing Foraker's right to pursue a legal malpractice Claim;

3. For an Order authorizing the Claim to be sold by the Multnomah County Sheriff in the manner provided by law as on execution, and that Plaintiffs be permitted to purchase the Claim at the sale;
4. For an award of Plaintiffs' attorney fees and costs; and
5. For such other relief as this Court finds just.

DATED this 5th day of July, 2023.

/s/ Tim L. Eblen
Tim L. Eblen, OSB No. 050252
tim@eblenfreed.com
Of Attorneys for Plaintiffs

RECORDING REQUESTED BY:



1433 SW 6th Avenue
Portland, OR 97201

Multnomah County Official Records
E Murray, Deputy Clerk

2019-021270

03/01/2019 02:50:48 PM

1R-W DEED Pgs=3 Stn=36 HENTGESB
\$15.00 \$11.00 \$6.00 \$60.00

\$92.00

AFTER RECORDING RETURN TO:

Order No.: 161900183-LW
Peggy Foraker
The Foraker Family Trust
12407 NE Morris Street
Portland, OR 97230

SEND TAX STATEMENTS TO:

The Foraker Family Trust
12407 NE Morris Street
Portland, OR 97230

APN: R144381

SPACE ABOVE THIS LINE FOR RECORDER'S USE

STATUTORY WARRANTY DEED

Diane Christine Larson, Successor Trustee of the Berdean Faye Olson Family Trust, dated March 28, 1996, Grantor, conveys and warrants to **Peggy Sue Foraker, Trustee of The Foraker Family Trust dated October 20, 2016,** Grantee, the following described real property, free and clear of encumbrances except as specifically set forth below, situated in the County of Multnomah, State of Oregon:

Lot 8, DALZIEL TERRACE, LOTS 7 TO 17 INCLUSIVE, in the City of Portland, County of Multnomah and State of Oregon.

THE TRUE AND ACTUAL CONSIDERATION FOR THIS CONVEYANCE IS THREE HUNDRED SIXTY THOUSAND AND NO/100 DOLLARS (\$360,000.00). (See ORS 93.030).

Subject to:

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF

BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010. THIS INSTRUMENT DOES NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92.010 OR 215.010, TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL, TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES, AS DEFINED IN ORS 30.930, AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010.

STATUTORY WARRANTY DEED
(continued)

IN WITNESS WHEREOF, the undersigned have executed this document on the date(s) set forth below.

Dated: March 1, 2019

Berdean Faye Olson Family Trust, dated March 28, 1996

BY: Diane Christine Larson
Diane Christine Larson
Successor Trustee

State of Oregon
County of Tackama

This instrument was acknowledged before me on 3/1/2019 by Diane Christine Larson as
Successor Trustee of the Berdean Faye Olson Family Trust, dated March 28, 1996.

[Signature]
Notary Public - State of Oregon

My Commission Expires: 2/17/20

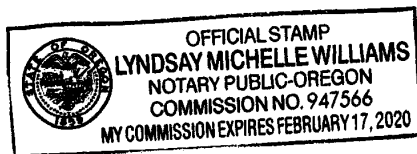


EXHIBIT "A"
Exceptions

Subject to:

City Liens, if any, in favor of the City of Portland. None found as of February 28, 2019.

Restrictions, but omitting restrictions, if any, based upon race, color, religion, sex, sexual orientation, familial status, marital status, disability, handicap, national origin, ancestry, or source of income, as set forth in applicable state or federal laws, except to the extent that said restriction is permitted by applicable law, as shown on that certain plat

Name of Plat: Dalziel Terrace

Verified Correct Copy of Original 5/4/2023.

FILED
IN THE CIRCUIT COURT OF THE STATE OF OREGON

2023 MAY -4 PM 3:38
COUNTY OF MULTNOMAH
4TH JUDICIAL DIST.

PEGGY S. FORAKER,

Plaintiff,

vs.

STEPHEN C. HENDRICKS, et al.,

Defendants.

CASE NO. 21CV07345

**OPINION AND ORDER ON CROSS
PETITIONS FOR ATTORNEY FEES**

This matter came before the court on April 14, 2023, for hearing on the parties' Cross Petitions for Attorney Fees. Plaintiff appeared through her attorney Katherine Heekin. Defendants appeared through their attorney Molly Honore. The Honorable Shelley D. Russell presided.

Plaintiff and Defendants each argue that they are entitled to recovery of attorney fees and costs based on the language of the Attorney Fee Agreement at issue in this case which states in relevant part that with regard to "any dispute regarding payment" of attorney fees, "the prevailing party shall be entitled to a reasonable fee from the party opposing the prevailing party." In this heavily litigated dispute, both sides argue that they are the prevailing party. For the reasons stated below, I find that Defendants are the sole prevailing party and should be awarded their fees.

I. DETERMINATION OF PREVAILING PARTY

Plaintiff argues that she is the prevailing party as to those counterclaims that Defendants did not replead, and as to Defendants' 2nd Counterclaim which was voluntarily dismissed by Defendants as moot. Defendants argue that Plaintiff is not the prevailing party as

to any of Defendants' counterclaims because the Fee Agreement envisions only one prevailing party, because Defendants are the only parties that obtained all relief they sought in the case, because Plaintiff is not entitled to fees on Defendants' voluntarily dismissed 2nd Counterclaim, and because Plaintiff failed to plead an entitlement to fees on the other dismissed Counterclaims.

For purposes of determining who is the prevailing party, the relevant procedural history of the instant case is as follows:

→ November 2, 2021, the court ruled on Plaintiff's Rule 21 Motions to Dismiss/Make More Definite and Certain, granting Plaintiff's motion as to Defendants' 4th through 7th Counterclaims with leave to amend to make more definite and certain. Defendants elected not to replead their 5th, 6th and 7th Counterclaims.

→ January 6, 2022, the court denied Plaintiff's Rule 21 Motions to Dismiss Defendants' Counterclaims.

→ February 9, 2022, the court granted Defendants' Partial Motion for Summary Judgment as to the majority of their claims but denied summary judgment on Defendants' 2nd Counterclaim as questions of fact precluded summary judgment on that claim.

→ July 11, 2022, the court granted Defendants' Motion for Summary Judgment against all of Plaintiffs' claims and denied summary judgment as to Defendants' 2nd Counterclaim, again because there were questions of fact for a jury to decide as to that counterclaim.

→ November 1, 2022, the court denied Plaintiff's Motion for Summary Judgment in their entirety, including against Defendants' 2nd Counterclaim. The court granted Defendants'

Motion for Summary Judgment on Defendants' 1st and 3rd – 5th Counterclaims, essentially granting all relief sought by Defendants and rendering their 2nd Counterclaim moot. The court at this time did not dismiss Defendants' 2nd Counterclaim.

→ Over Plaintiff's objection, Defendants subsequently voluntarily dismissed their 2nd Counterclaim as they had already been granted all relief they requested. The 2nd Counterclaim was dismissed by order of Judge David Rees with language allowing Plaintiff to argue that she was prevailing party on this claim.

According to ORS 20.077(2), the "prevailing party" is "the party who receives a favorable judgment * * * on the claim[.]" In actions involving multiple claims and counterclaims, there can be more than one "prevailing party." *Lemargie v. Johnson*, 212 Or.App. 451, 454 n. 3 (2007). To determine who is the prevailing party the court must weigh on a claim-by-claim basis, what was sought by each party against the result obtained. *Beggs v. Hart*, 221 Or.App. 528, 536-37 (2008).

Where a party voluntarily dismisses a claim, there is no "prevailing party" for purposes of a fee award. *Chinese Consolidated Benevolent Assoc. v. Chin*, 316 Or.App. 514, 521 (2021). Voluntary dismissal of a claim renders the underlying merits of the claim, as well as the defenses attacking that claim, moot. ORCP 54. Once a claim is rendered moot, the court lacks jurisdiction to resolve its merits solely for the purpose of determining attorney fee entitlement.

Here, the plain language of the Fee Agreement between the parties envisions one prevailing party in any dispute between them. The "dispute" at issue in this case was how to calculate the fee to which Defendants are entitled under the Fee Agreement: 40% of the entire recovery in the underlying case or the attorney fee awarded by the federal court. This court's

ruling on the parties' competing summary judgment motions answered that question in Defendants' favor. Under the interpretation of the Fee Agreement language, Defendants are the prevailing parties.

As to the dismissal of Defendants' Counterclaims in the instant case, because Defendants elected not to replead their 5th through 7th Counterclaims, they were essentially rendered moot and were not resolved on their merits. The same is true for Defendants' voluntarily dismissed 2nd Counterclaim. Furthermore, examining the relative success of the parties at achieving their goals, the dismissal of these counterclaims did not achieve a better result for Plaintiff or a worse result for Defendants. The dismissed counterclaims sought the same relief Defendants succeeded in securing through summary judgment on their surviving counterclaims. Plaintiff, on the other hand, was wholly unsuccessful in achieving any of the relief she sought. Balancing the relief sought by each party against the result obtained, Defendants are far and away the prevailing parties in this action.

II. Entitlement to and Amount of Fees

Turning to the determination of the amount and reasonableness of the fees sought by Defendants, the court must consider the factors set out in ORS 20.075(1) (whether to award fees) and (2) (amount to award).

A. ORS 20.075(1) Factors

ORS 20.075(1)(a) – The conduct of the parties in the transactions or occurrences that gave rise to the litigation, including any conduct that was reckless, willful, malicious, in bad faith, or illegal.

Plaintiff Foraker spent her long legal career litigating personal injury cases and was intimately familiar with the nature and kinds of fee agreements attorneys use in that type of

Verified Correct Copy of Original 5/4/2023.

litigation. Although Plaintiff Foraker claimed that a brain injury impeded her understanding of the Fee Agreement at issue in this case, she continued to practice law for a number of years after suffering said injury, and engaged in educated, knowledgeable discussions and debates with Defendants and with her counsel in this lawsuit throughout the course of this litigation. Plaintiff's actions in assuring Defendants they would be paid, then suing them once their drafting work on Plaintiff's appeal was complete strike this court as disingenuous at best, and conniving at worst. This court ultimately found her claims of wrongdoing by Defendants unsupported by evidence and dismissed them all. This factor supports an award of attorney fees and costs to Defendants.

ORS 20.075(1)(b) – The objective reasonableness of the claims and defenses asserted by the parties.

In light of the overwhelming success of Defendants' efforts on Plaintiff's behalf in the underlying federal litigation, the plain language of the Fee Agreement, as well as Plaintiff's own knowledge and experience in the field, the claims Plaintiff brought in this lawsuit are objectively unreasonable. This factor supports an award of attorney fees and costs to Defendants.

ORS 20.075(1)(c) – The extent to which an award of attorney fees in the case would deter others from asserting good faith claims or defenses in similar cases.

An award of attorney fees and costs in this case would encourage others to assert good faith claims and defenses in similar cases. This factor favors Defendants.

ORS 20.075(1)(d) – The extent to which an award of attorney fees in the case would deter others from asserting meritless claims and defenses.

Exposure to attorney fees and costs would deter others from asserting similarly meritless claims and defenses. This factor favors Defendants.

ORS 20.075(1)(e) – The objective reasonableness of the parties and the diligence of the parties and attorneys during the proceedings.

This has been a hard-fought case by all parties involved. From the court's perspective, emotions have more than once clouded reason between and among the parties on both sides of the aisle but appear to have affected Plaintiff Foraker's ability to see this case clearly and to make rational decisions to a greater extent than it has Defendants. This factor weighs in favor of Defendants.

ORS 20.075(1)(f) – The objective reasonableness of the parties and the diligence of the parties in pursuing settlement of the dispute.

Despite this court's rulings on summary judgment, and according to the declarations of counsel submitted by Defendants, it appears that settlement discussions between the parties were entirely unproductive. Defendants state that they made four settlement offers to Plaintiff over the course of this case and participated in one global settlement conference, but Plaintiff made no effort to engage in fruitful discussion. Plaintiff argues Defendants' settlement offers were unreasonable and would have required her to pay Defendants money she believed belonged to her from the federal litigation. On balance, the court finds that this factor weighs in favor of Defendants.

ORS 20.075(1)(g) – The amount the court has awarded as a prevailing party fee under ORS 20.190.

Based on my findings under ORS 20.075, the court awards Defendants an enhanced prevailing party fee in the amount of \$5,000 pursuant to ORS 20.190(3).

ORS 20.075(1)(h) – Such other factors as the court may consider appropriate under the circumstances of the case.

This case has involved scorched earth litigation on both sides. Throughout this case it appears that every issue, no matter how small, has been analyzed, briefed, and argued at great length and detail due to the personal and professional reputations at stake for all involved. This court is not blind to the toll this matter has taken on the parties and counsel. To some extent emotion rather than logic has been driving this litigation, resulting in hundreds of hours of time and great expense. Plaintiff made certain choices in this litigation that increased her exposure to defense fees and costs and must now bear the brunt of those fees and costs.

The court finds that an award of attorney fees and costs to Defendants is appropriate pursuant to the factors in ORS 20.075(1).

B. ORS 20.075(2) Factors

Once the court has determined that an award of fees to the prevailing party is appropriate based on the ORS 20.075(1) factors, the court must determine a reasonable amount of fees. To determine the amount of fees to award, the court considers not only the ORS 20.057(1) factors, but must examine the factors set out in ORS 20.075(2) as well.

ORS 20.075(2)(a) – The time and labor required in the proceeding, the novelty and difficulty of the questions involved in the proceeding, and the skill needed to properly perform the services.

Both parties submitted itemized statements of time charged in this matter which the court has reviewed. In addition, the court examined the time records of PLF counsel with the Cable Houston firm for comparison with the records submitted by Defendants. Cable Houston time was incurred by the Professional Liability Fund on behalf of Defendants in their defense against Plaintiff's claims and is not sought in Defendants' fee petition. It is the court's understanding that there is no dispute as to the hourly rates charged by Defense counsel in this

case, only as to the number hours billed. All of the attorneys involved in this case are highly skilled, well-respected members of the bar.

The novelty and difficulty of the questions involved in this case are clear. There is little to no Oregon case law addressing disputes over contingent fee agreements and attorney fees resulting therefrom. The theories posited by Plaintiff were for the most part novel and inventive albeit unsuccessful. This was a hard-fought case on both sides.

ORS 20.075(2)(b) – The likelihood, if known to the client, that the acceptance of this case would preclude the attorney from taking other cases.

This factor is not relevant to these proceedings.

ORS 20.075(2)(c) – The fee customarily charged in the locality for similar legal services.

The court finds that the hourly rates charged by the attorneys in this case are reasonable. The court further acknowledges that defense counsel reduced their rates slightly for Defendants.

ORS 20.075(2)(d) – The amount involved in the controversy and the results obtained.

The amount sought by the Plaintiff in this case exceeded \$4.8 million, of which she recovered nothing. The fees sought by Defendants are roughly 20% of Plaintiff's prayer. Defendants defeated Plaintiff's claims and succeeded on four of their seven counterclaims, granting them the entirety of the relief they sought.

ORS 20.075(2)(e) – The time limitations imposed by the client or the circumstances of the case.

This factor is not relevant to these proceedings.

ORS 20.075(2)(f) – The nature and length of the attorney's professional relationship with the client.

This factor is not relevant to these proceedings.

8 – ORDER ON CROSS PETITIONS FOR ATTORNEY FEES

ORS 20.057(2)(g) – The experience, reputation, and ability of the attorney performing the services.

As stated above, the attorneys involved in this case are all experienced, well known, highly competent and skilled counsel. This factor is reflected in the lack of dispute over the hourly rates sought by Defense counsel.

ORS 20.075(2)(h) & (i) are not relevant to these proceedings and do not factor into this opinion.

C. Attorney Fees Billed by Defendants Hendricks and Brann Individually

Both Hendricks and Brann submit their own billing records for time they spent assisting with the litigation, conducting research and preparing briefs. The parties dispute whether such time is recoverable by a litigant/attorney. Both Hendricks and Brann submitted detailed declarations and billing records segregating time spent performing legal tasks from time spent participating as clients in the case. I find that pursuant to *Colby v. Gunson*, 349 Or. 1 (2010); and *Moro v. State*, 360 Or. 467 (2016), Hendricks and Brann are entitled to recover fees for their time spent performing legal work in the case.

III. Reasonable Attorney Fees

No objection was made to the hourly rates sought by Defendants in this litigation. Defendants submitted supporting evidence in the form of declarations and surveys regarding the rates they charge. The court finds the hourly rates are reasonable.

Plaintiff argues for a reduction in Defendants' time on the basis that Defendants utilized many associates and partners in the Markowitz firm along with Defendants Hendricks and Brann while Plaintiff only employed the services of two attorneys. Plaintiff claims Defendants submitted duplicate time entries for multiple attorneys and charged excessive fees for work

that required limited discovery, depositions, and legal research. Plaintiff also objects to time spent pursuing remedies in the federal court case.

Defendants argue that the nature and novelty of this case warranted the amount of time, the number of attorneys, and the hourly rates sought because Plaintiff engaged in unreasonable litigation practices that necessitated the motions practice, research, strategizing and discovery Defendants undertook. Defendants argue that Plaintiff had numerous opportunities to resolve this litigation without both sides incurring high fees but chose not to.

Both sides accuse the other of nefarious motives, less than ethical conduct, and over-litigating this case.

The court finds that both sides have a point. The fees sought by Defendants based on the time spent are extraordinarily high, however, those fees were driven in part by Plaintiff's litigation strategies and Defendants' need to respond. Following a review of the time records of the parties and Plaintiffs' objections to specific time records as set out in Plaintiff's counsel's Declaration Exhibits, the court finds that the fees sought by Defendants should be reduced by 25% across the board and awards Defendants fees in the amount of \$739,070.88 for time incurred through April 14, 2023.

VI. Costs

The authority to award costs is controlled entirely by statute. *Blacknall v. Board of Parole*, 223 Or.App. 294, 196 P.3d 20 (2008), *aff'd*, 348 Or. 131, 229 P.3d 595 (2010). ORCP 68A(2) provides that costs incurred (other than for legal services) in pursuing an action are recoverable.

ORCP 68A(2) prohibits the recovery of deposition costs unless otherwise provided by rule or statute. Defendants are not entitled to recovery of their deposition costs.

Defendants argue that they are entitled to recover costs for computer-aided research as charges billed to their clients. ORCP 68A(2) does not spell out computer-aided legal research as a recoverable costs and the court can find no explicit authority for awarding them. Defendants are not entitled to recovery of costs for computer-aided legal research.

The court finds that Defendants are entitled to recovery of costs incurred in pursuing their successful counterclaims in the amount of \$11,606.14.

V. Conclusion

The court finds Defendants are the sole prevailing party in this matter, awards Defendants attorney fees through April 14, 2023, in the amount of \$739,070.88, and awards costs in the amount of \$11,606.14.

DATED this 4th day of May 2023.

Shelley D. Russell

SHELLEY D. RUSSELL
Circuit Court Judge

THIS SPACE PROVIDED FOR RECORDER'S USE ONLY

Multnomah County Official Records
E Murray, Deputy Clerk

2023-028769

05/12/2023 08:50:14 AM

DEED-DEED Pgs=2 Stn=77 ATLR
\$10.00 \$11.00 \$10.00 \$60.00

\$91.00

WHEN RECORDED RETURN TO:

Gren Trust
42 Broad Street Road NO. 131
Manakin Sabot , VA 23103

SEND TAX STATEMENTS TO THE ABOVE TRUST AND ADDRESS
:
BARGAIN AND SALE DEED

THE GRANTOR: Foraker Family Trust

THE GRANTEE: The Gren Trust

For in consideration of \$490,000, and other valuable consideration, the Grantor grants and releases to the Grantee all of the Grantor's rights, title and in the following described property:

12407 NE Morris St. Portland, OR 97230 MULTNOMAH COUNTY

DALZIEL TERR LOT 8

Grantor grants all of Grantor's rights, tile and interest in and to the following described property and premises to the Grantee(s) heirs and assigns forever, so that neither Grantor nor Grantor's legal representatives or assigns shall have, claim or demand any right or title to the property.

Dated May 10th, 2023. *[Signature]*
Grantor

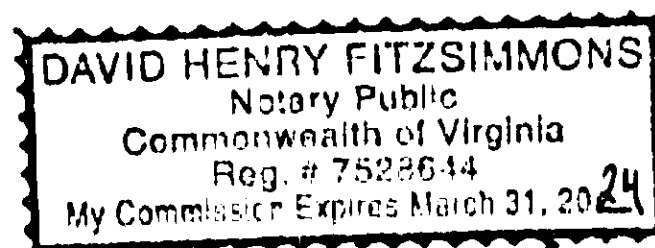
STATE OF VIRGINIA
CITY/COUNTY OF Goochland to with:

The foregoing instrument was acknowledged before me this 10 day of May 2023 by PEGGY SUE FORAKER, TRUSTEE OF THE FORAKER FAMILY TRUST DATED OCTOBER 20, 2016.

David Henry Fitzsimmons
NOTARY PUBLIC

My Commission expires: March 31, 2024

Grantee's mailing address:
42 Broad St. Rd.,
Manakin Sabot, VA 23103



David Henry Fitzsimmons
Notary Public
Commonwealth of Virginia
Reg # 7528644
My Commission expires March 31, 2024

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MULTNOMAH

PEGGY S. FORAKER,

Plaintiff,

vs.

STEPHEN C. HENDRICKS, an Oregon
resident, HENDRICKS LAW FIRM, P.C., an
Oregon corporation, HEATHER A. BRANN,
an Oregon resident, and HEATHER A.
BRANN, PC, an Oregon corporation,

Defendants.

No. 21CV07345

Hon. Shelley D. Russell

**SUPPLEMENTAL JUDGMENT
AWARDING DEFENDANTS'
ATTORNEY FEES THROUGH
APRIL 14, 2023 AND MONEY
AWARD**

SUPPLEMENTAL JUDGMENT

For the reasons set out in the Court's May 4, 2023 Order on Cross Petitions for
Attorney Fees

IT IS HEREBY ORDERED AND ADJUDGED that:

1. Judgment is entered in Defendants' favor for attorney fees in the sum of
\$739,070.88.
2. Judgment is entered in Defendants' favor for costs and disbursements in the
sum of \$11,606.14.
3. The Court awards Defendants a prevailing party fee of \$345.00 and an
enhanced prevailing party fee of \$5,000.00.

///

///

MONEY AWARD

Judgment Creditors:

Hendricks Law, PC
30088 SW Egger Rd.
Hillsboro, Oregon 97123

Heather A. Brann PC
1351 NE East Devils Lake Rd.
Otis, Oregon 97368

Judgment Creditors' Attorneys:

David B. Markowitz
Molly Honoré
Markowitz Herbold PC
1455 SW Broadway, Suite 1900
Portland, OR 97201

Heather A. Brann
Heather A. Brann PC
PO Box 11588
Portland, OR 97211

Jon W. Monson
Brian S. Epley
Cable Huston LLP
1455 SW Broadway, Suite 1500
Portland, OR 97201

Payment entitlement:

There is no known person or public body known to the judgment creditors who is entitled to any portion of the payment made upon the judgment.

Judgment Debtor:

Peggy Foraker

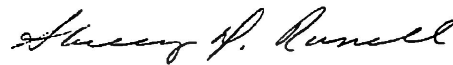
Judgment Debtor's Attorney:

Katherine R. Heekin
The Heekin Law Firm
7327 SW Barnes Road, Suite 824
Portland, OR 97225

Cody Hoesly
Barg Singer Hoesly PC

1		121 SW Morrison Street
2		Suite 600
3		Portland, Oregon 97204
4	Last Known Address:	2436 Bridgewater Dr.
5		Maidens, VA 23102
6	Date of Birth:	12/12/1949
7	Social Security Number:	***-**-1781
8	Attorney Fees:	\$739,070.88
9	Litigation Costs:	\$ 11,606.14
10	Prevailing Party fee:	\$ 345.00
11	(ORS 22.190(2)(a)(A))	
12	Enhanced Prevailing Party fee:	\$ 5,000.00
13	(ORS 20.190(3))	
14	TOTAL MONEY AWARD	\$756,022.02
15	Post-Judgment Interest:	9% per annum simple interest from entry of
16		judgment in the Circuit Court.

5/16/2023 3:25:16 PM



Circuit Court Judge Shelley D. Russell

Presented by:

Heather A. Brann, OSB # 040495
 Heather A. Brann PC
 branns@earthlink.net
Of Attorneys for Defendants

UTCR 5.100(2) CERTIFICATE OF READINESS

I hereby certify that the foregoing proposed judgment or order is ready for judicial signature based on the following:

1. ☐ Each party affected by the order or judgment has stipulated to the order or judgment, as shown by each party's signature on the document being submitted.
2. ☒ Each party affected by this order or judgment has approved the order or judgment, as shown by each party's signature on the document being submitted or by written confirmation of approval sent to me.
3. ☐ I have served a copy of this order or judgment on each party entitled to service pursuant to UTCR 5.100 (on _____) and:
 - a. ☐ No objection has been served on me.
 - b. ☐ I received objections that I could not resolve with a party despite reasonable efforts to do so. I have filed a copy of the objections I received and indicated which objections remain unresolved.
 - c. ☐ After conferring about objections [role and name of objecting party] agreed to independently file any remaining objections.
4. ☐ Service is not required pursuant to subsection (3) of this rule, or by statute, rule or otherwise.
5. ☐ This is a proposed judgment that includes an award of punitive damages and notice has been served on the Director of the Crime Victims' Assistance Section as required by subsection (5) of this rule.
6. ☐ Other: _____

DATED this 9th day of May, 2023.

HEATHER A. BRANN PC

By: /s/ Heather A. Brann

Heather A. Brann, OSB #040495
Brann Defendants

ATTORNEY CERTIFICATE OF SERVICE

I hereby certify that on May 5, 2023, I have made service of the foregoing **JUDGMENT** on the parties listed below in the manner indicated:

Katherine R. Heekin
The Heekin Law Firm
7327 SW Barnes Road, Suite 824
Portland, OR 97225

Attorney for Plaintiff

- ☐ U.S. Mail
☐ Facsimile
☒ Hand Delivery
☐ Overnight Courier
☒ Email - katherine@heekinlawoffice.com
☐ Odyssey File & Serve™

Cody Hoesly
Barg Singer Hoesly, PC
121 SW Morrison Street, Suite 600
Portland, Oregon 97204

Attorney for Plaintiff

- ☐ U.S. Mail
☐ Facsimile
☒ Hand Delivery
☐ Overnight Courier
☒ Email - choesly@bargsinger.com
☐ Odyssey File & Serve™

Jon W. Monson
Brian S. Epley
Cable Huston LLP
1455 SW Broadway, Suite 1500
Portland, OR 97201

Attorney for Defendants Hendricks

- ☐ U.S. Mail
☐ Facsimile
☐ Hand Delivery
☐ Overnight Courier
☒ Email - jmonson@cablehuston.com
bepley@cablehuston.com
☐ Odyssey File & Serve™

David B. Markowitz
Molly Honoré
Hannah Hoffman
Markowitz Herbold PC
1455 SW Broadway, Suite 1900
Portland, OR 97201

Attorney for Defendants

- ☐ U.S. Mail
☐ Facsimile
☐ Hand Delivery
☐ Overnight Courier
☒ Email -
davidmarkowitz@markowitzherbold.com
mollyhonore@markowitzherbold.com
hannahhoffman@markowitzherbold.com
☐ Odyssey File & Serve™

DATED this 9th day of May, 2023.

HEATHER A. BRANN, PC

/s/ Heather A. Brann

Heather A. Brann, OSB #040495
Brann Defendants

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MULTNOMAH

HENDRICKS LAW FIRM, P.C.,)	Case No. 23CV23474
an Oregon corporation, and)	
HEATHER A. BRANN, PC, an)	
Oregon corporation,)	
)	
Plaintiffs,)	SUMMONS
)	
v.)	
)	
PEGGY S. FORAKER, as an)	
individual, and as trustee of the)	
Foraker Family Trust, and)	
MCKENZIE LEIGH FORAKER, as)	
trustee of the Gren Trust.)	
)	
Defendants.)	

TO: **Peggy S. Foraker**
2436 Bridgewater Dr.
Maidens, VA 23102

IN THE NAME OF THE STATE OF OREGON: You are hereby required to appear and defend the Complaint filed against you in the above-entitled cause within 30 days from the date of service of this summons on you; and if you fail to appear, Plaintiffs will apply to the court for the relief demanded in the Complaint.

NOTICE TO DEFENDANT:
READ THESE PAPERS CAREFULLY!

You must “appear” in this case or the other side will win automatically. To “appear” you must file with the court a legal paper called a “motion” or “answer.” The “motion” or “answer” must be given to the court clerk or administrator within 30 days, along with the required filing fee. It must be in proper form and have proof of service on Plaintiff’s attorney or, if Plaintiff does not have an attorney, proof of service on Plaintiff.

IF YOU HAVE ANY QUESTIONS, YOU SHOULD SEE AN ATTORNEY IMMEDIATELY. If you need help in finding an attorney, you may contact the Oregon State Bar’s Lawyer Referral Service online at www.oregonstatebar.org or by calling (503) 684-3763 (in the Portland metropolitan area) or toll-free elsewhere in Oregon at (800) 452-7636. **An Important Notice to Military Personnel and their Dependents is attached.**

/s/ Tim L. Eblen
Michelle K. Freed OSB # 042880
Tim L. Eblen OSB # 050252
Of Attorneys for Plaintiff

STATE OF OREGON, County of Multnomah, ss.

I, the undersigned attorney of record for the Plaintiff, certify that the foregoing is an exact and complete copy of the original summons in the above-entitled action.

Attorney of Record for Plaintiff

TO THE OFFICER OR OTHER PERSON SERVING THIS SUMMONS: You are hereby directed to serve a true copy of this summons, together with a true copy of the complaint mentioned therein, on the Defendant, and to make your proof of service on a separate similar document which you shall attach hereto.

/s/ Tim L. Eblen

Michelle K. Freed OSB # 042880

Tim L. Eblen, OSB No. 050252

Of Attorneys for Plaintiff

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MULTNOMAH

HENDRICKS LAW FIRM, P.C.,)	Case No. 23CV23474
an Oregon corporation, and)	
HEATHER A. BRANN, PC, an)	
Oregon corporation,)	
)	
Plaintiffs,)	SUMMONS
)	
v.)	
)	
PEGGY S. FORAKER, as an)	
individual, and as trustee of the)	
Foraker Family Trust, and)	
MCKENZIE LEIGH FORAKER, as)	
trustee of the Gren Trust.)	
)	
Defendants.)	

TO: McKenzie Leigh Foraker
2436 Bridgewater Dr.
Maidens, VA 23102

IN THE NAME OF THE STATE OF OREGON: You are hereby required to appear and defend the Complaint filed against you in the above-entitled cause within 30 days from the date of service of this summons on you; and if you fail to appear, Plaintiffs will apply to the court for the relief demanded in the Complaint.

NOTICE TO DEFENDANT:
READ THESE PAPERS CAREFULLY!

You must “appear” in this case or the other side will win automatically. To “appear” you must file with the court a legal paper called a “motion” or “answer.” The “motion” or “answer” must be given to the court clerk or administrator within 30 days, along with the required filing fee. It must be in proper form and have proof of service on Plaintiff’s attorney or, if Plaintiff does not have an attorney, proof of service on Plaintiff.

IF YOU HAVE ANY QUESTIONS, YOU SHOULD SEE AN ATTORNEY IMMEDIATELY. If you need help in finding an attorney, you may contact the Oregon State Bar’s Lawyer Referral Service online at www.oregonstatebar.org or by calling (503) 684-3763 (in the Portland metropolitan area) or toll-free elsewhere in Oregon at (800) 452-7636. **An Important Notice to Military Personnel and their Dependents is attached.**

/s/ Tim L. Eblen
Michelle K. Freed OSB # 042880
Tim L. Eblen OSB # 050252
Of Attorneys for Plaintiff

STATE OF OREGON, County of Multnomah, ss.

I, the undersigned attorney of record for the Plaintiff, certify that the foregoing is an exact and complete copy of the original summons in the above-entitled action.

Attorney of Record for Plaintiff

TO THE OFFICER OR OTHER PERSON SERVING THIS SUMMONS: You are hereby directed to serve a true copy of this summons, together with a true copy of the complaint mentioned therein, on the Defendant, and to make your proof of service on a separate similar document which you shall attach hereto.

/s/ Tim L. Eblen

Michelle K. Freed OSB # 042880

Tim L. Eblen, OSB No. 050252

Of Attorneys for Plaintiff

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MULTNOMAH

HENDRICKS LAW FIRM, P.C., an Oregon
corporation, and HEATHER A. BRANN,
PC, an Oregon corporation,

Plaintiffs,

v.

PEGGY S. FORAKER, as an individual,
and as trustee of the Foraker Family Trust,
and MCKENZIE LEIGH FORAKER, as
trustee of the Gren Trust,

Defendants.

Case No. 23CV23474

AFFIDAVIT OF SERVICE

The undersigned, being first duly sworn, does hereby depose and say:

I am a competent person 18 years of age or older and a resident of the state of service or
this state and am not a party to nor an officer, director or employee of, nor attorney for any party,
corporate or otherwise, and the person, firm, or corporation served is the identical one named in
the action.

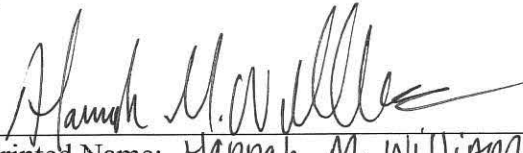
I Deputy H.M. Williams (name), do hereby affirm that on the 11th
day of July, 2023, at 10:26 A.M. (time), I
personally served **Peggy S. Foraker**, a copy of Summons, First Amended Complaint and First
Request for Production of Documents to Peggy S. Foraker at **2436 Bridgewater Dr., Maidens,**
VA 23102.

///

///

1 A copy of my fully executed certificate of service stamp is attached hereto as **Exhibit 1**
2 and incorporated herein by this reference.

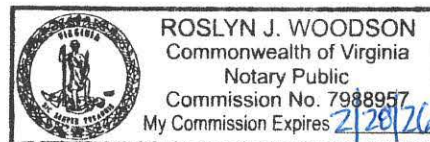
3
4 Executed this 11 day of July, 2023.

5
6 
7 Printed Name: Hannah M. Williams
8 Title: Deputy

9 STATE OF Virginia)
10) ss.
County of Goochland)

11 BEFORE ME, on this 27th day of July, 2023, the above named personally appeared
12 before me, being duly sworn, foregoing Affidavit are true and correct to the best of their
knowledge and belief.

13 
14 Notary Public



NAME Peggy Foraker
ADDRESS 2436 Bridgewater Dr
☒ PERSONAL SERVICE

___ Being unable to make personal service, a copy was delivered in the following manner:

___ Delivered to family member (not temporary sojourner or guest) age 16 or older at usual place of abode of party named above giving information of its purport. List name, age of recipient and relation of recipient to party named above.

___ Posted on front door or such other door as appears to be the main entrance of usual place of abode. (Other authorized recipient not found).

___ Not Found

___ No Effort is Found

Deputy Sheriff A. Williams Date 1/11/23
For: S. N. Creasey, Sheriff Goochland County

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MULTNOMAH

HENDRICKS LAW FIRM, P.C., an
Oregon corporation, and HEATHER A.
BRANN, PC, an Oregon corporation,

Plaintiffs,

v.

PEGGY S. FORAKER, as an individual, and
as trustee of the Foraker Family Trust, and
MCKENZIE LEIGH FORAKER, as trustee of
the Gren Trust.

Defendants.

Case No. 23CV23474

DECLARATION OF MAILING

The undersigned hereby swears and declares as follows:

The Goochland County Sheriff made substituted service upon McKenzie Leigh Foraker on July 11, 2023, at 2436 Bridgewater Drive, Maidens, VA 23102, by delivering true copies of the Summons, First Amended Complaint, and Plaintiff's First Request for Production of Documents, at about 1:15 p.m., to Peggy Foraker, who is McKenzie Leigh Foraker's mother and co-resident at that address.

I hereby certify that on July 19, 2023, I caused to be mailed a true copy of the Summons, First Amended Complaint, and Plaintiff's First Request for Production of Documents, to

///

///

///

1 McKenzie Leigh Foraker at the following address via U.S. first class mail and certified mail:

2 **McKenzie Leigh Foraker**
3 **2436 Bridgewater Dr.**
4 **Maidens, VA 23102**

5 I hereby declare that the above statement is true to the best of my knowledge and
6 belief, and that I understand it is made for use as evidence in court and is subject to penalty for
7 perjury.

8 /s/ Willow M. Myrick
9 Willow M. Myrick